



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,756	03/08/2004	Adrian P. Stephens	42P18412	4365
59796 7590 03/03/2009 INTEL CORPORATION c/o CPA Global P.O. BOX 52050 MINNEAPOLIS, MN 55402				
EXAMINER				
LEE, JOHN J				
ART UNIT		PAPER NUMBER		
2618				
MAIL DATE		DELIVERY MODE		
03/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/796,756

**Applicant(s)**

STEPHENS ET AL.

**Examiner**

JOHN J. LEE

**Art Unit**

2618

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 and 16-27 is/are allowed.
- 6) ☒ Claim(s) 8-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, see Appeal Brief, filed November 26, 2008, with respect to reconsideration have been fully considered and are persuasive. The finality of previous action has been withdrawn. Prosecution on the merits of this application is reopened.

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Section IV.C, reads as follows:

While abstract ideas, natural phenomena, and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be. In evaluating whether a claim meets the requirements of section 101, the claim must be considered as a whole to determine whether it is for a particular application of an abstract idea, natural phenomenon, or law of nature, rather than for the abstract idea, natural phenomenon, or law of nature itself.

For claims including such excluded subject matter to be eligible, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomenon. *Diehr*, 450 U.S. at 187,209

USPQ at 8 ("application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection."); *Benson*, 409 U.S. at 71,175 USPQ at 676 (rejecting formula claim because it "has no substantial practical application").

To satisfy section 101 requirements, the claim must be for a practical application of the Sec. 101 judicial exception, which can be identified in various ways:

The claimed invention "transforms" an article or physical object to a different state or thing.

The claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

4. **Claims 8 – 15** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding **claims 8 - 15**: the claimed limitation "a machine readable medium that

provides instructions...perform operations” is not patentable since pages 6, paragraphs 11 in the specification states “computer-readable medium may include electrical, optical, acoustical or other form of propagated signals (e.g., carrier wave, infrared signals, digital signals, the interfaces that transmit and/or receive those signals, etc) and other”.

5. Application with a useful, concrete, and tangible result in the technological arts.

In order to for the claimed process to produce a "useful, concrete, and tangible" result, recitation of one or more of the following elements is suggested:

- 1 The manipulation of data that represents a physical object or activity transformed from outside the computer (MPEP 2106 IVB2(b)(i)).
- 2 A recitation of a physical transformations outside the computer, for example in the form of pre or post computer processing activity (MPEP 2106 IVg2(b)(i)).
- 3 A direct recitation of a practical application in the technological arts (MPEP 2106 IVg2(b)(ii)).

Applicant is also advised to provide a written explanation of how and why the claimed invention (either as currently recited or as amended) produces a useful, concrete and tangible result.

***Allowable Subject Matter***

6. Claims 1-7 and 16-27 are allowed.

Claims 1-7 and 16-27 are allowable over the prior art of record because a search does not detect the combined claimed elements as set forth in the claims 1-7 and 16-27.

As recited in independent claims 1, 16, and 22, none of the prior art of record teaches or fairly suggests that a mobile station performing transmitting data at a first transmit power level, determining a first value for a network traffic parameter at the first transmit power level, and determining a second power level different than the first power level, transmitting data at the second transmit power level, and determining a second value for the network traffic parameter at the second transmit power level, wherein the network traffic parameter is based on a volume of communications observed by the mobile station, and together with combination of other element as set forth in the claims 1-7 and 16-27. Therefore, claims 1-7 and 16-27 are allowable over the prior art of records.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Perreault et al. (US 5,805,994) discloses Method for Transmit Power Control in a Communication System.

Shoemake (US 7,257,094) discloses Jointly Controlling Transmission Rate and Power in a Communication System.

Salonaho et al. (US 2002/0082037) discloses Method for Controlling Transmission Power.

Information regarding...Patent Application Information Retrieval (PAIR) system... at 866-217-9197 (toll-free)."

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231  
Or P.O. Box 1450  
Alexandria VA 22313

or faxed (571) 273-8300, (for formal communications intended for entry)

Or: (703) 308-6606 (for informal or draft communications, please label "PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to USPTO Headquarters, Alexandria, VA.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John J. Lee** whose telephone number is **(571) 272-7880**. He can normally be reached Monday-Thursday and alternate Fridays from 8:30am-5:00 pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, **Nay Maung**, can be reached on **(571) 272-7882**. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4700.

Application/Control Number: 10/796,756  
Art Unit: 2618

Page 6

J.L  
February 27, 2009

John J Lee

/JOHN J LEE/  
Primary Examiner, Art Unit 2618